



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Atty Docket No. 3335.01US01
Charles Lavigne)	
Application No.:)	Office of Petitions
10/018,189)	Patent and Trademark Office
Filed:)	
March 18, 2002)	
Title: AMINO ACIDS FROM FISH AND)	
SOY PROTEINS IMPROVE)	
INSULIN SENSITIVITY)	

PETITION UNDER 37 C.F.R. § 1.181
TO WITHDRAW A HOLDING OF ABANDONMENT

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

1. Applicant petitions for withdrawal of a holding of abandonment of Application Serial No. 10/018,189. This petition is being filed to preserve the pendency of the above referenced application to maintain copendency with a divisional application serial number 10/929,913 which was filed August 30, 2004 but was not accorded a filing date because drawings were inadvertently omitted from the filed papers. A copy of the Notice of Incomplete Nonprovisional Application is included as Attachment A. Applicant is filing the omitted drawings on the same day that this petition is being filed to establish a filing date for the divisional application.

2. Applicant received a Notice of Abandonment mailed on November 17, 2004. (Attachment B)

3. The Notice of Abandonment indicates that the application is abandoned in view of Applicant's failure to timely file a proper reply to the Office Letter mailed on September 22, 2003. The Notice of Abandonment also indicates a reply was received on March 22, 2004 and April 8, 2004, but it does not constitute a proper reply or a bona fide attempt at a proper reply to the non-final rejection. The Notice of Abandonment further indicates Applicant cancelled all claims drawn to the elective invention and presented only claims to a non-elective invention.

4. On July 2, 2004, Applicant received an Office Communication mailed on June 28, 2004. (Attachment C) That Office Communication states in part "since the submission appears to be a bona fide attempt to provide a complete reply to the prior Office Action, Applicant is given a shortened statutory period of one month or 30 days from the mailing date of this letter, whichever is longer, to submit a complete reply." This shortened statutory period supersedes the time period set in the prior Office Action." There is no indication in the Office Communication that the period for reply is not extendable.

5. Applicant appreciates the opportunity to discuss the status of the above referenced application with Examiner Ruth A. Davis on November 29, 2004. Based on the foregoing, Applicant submits that the six month statutory period for reply began on the mailing date of the Office Communication, June 28, 2004, and should extend, with five-months extension, to December 28, 2004. Therefore, the Notice of Abandonment

was issued prematurely. Applicant respectfully requests that the Examiner withdraw the holding of abandonment.

6. Applicant includes with this Petition to Withdraw a Holding of Abandonment a Petition for an Extension of Time along with the fee for five months extension of time.

Respectfully submitted,



Paul C. Onderick
Registration No. 45,354


Customer No. 24113
Patterson, Thunte, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-5766

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

12-01-2004
Date of Deposit


Paul C. Onderick

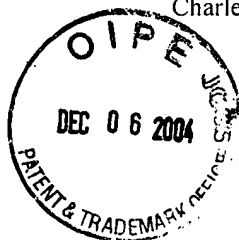


UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/929,913	08/30/2004	Charles Lavigne	3335.01US02

Patterson, Thuente, Skaar & Christensen, P.A.
 4800 IDS Center
 80 South 8th Street
 Minneapolis, MN 55402-2100



CONFIRMATION NO. 6150

FORMALITIES LETTER



OC000000014209566

Date Mailed: 10/27/2004

NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.

All of the items noted below **and a newly executed oath or declaration covering the items must** be submitted within **TWO MONTHS** of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e)). Replies should be mailed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

The filing date will be the date of receipt of all items required below, unless otherwise indicated. Any assertions that the item(s) required below were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the \$130.00 petition fee (37 CFR 1.17(h)). If the petition states that the application is entitled to a filing date, a request for a refund of the petition fee may be included in the petition. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

- The application was deposited without drawings. 35 U.S.C. 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented." *Applicant should reconsider whether the drawings are necessary under 35 U.S.C. 113 (first sentence).*

Replies should be mailed to: Mail Stop Missing Parts
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

PCO 3335.01-US-01

JHP



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DEC 06 2004

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,189	03/18/2002	Charles Lavigne	28.018	4897

7590 11/17/2004

PATTERSON, THUENTE, SKAAR AND CHRISTENSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

EXAMINER

DAVIS, RUTH A

ART UNIT PAPER NUMBER

1651

RECEIVED

DATE MAILED: 11/17/2004

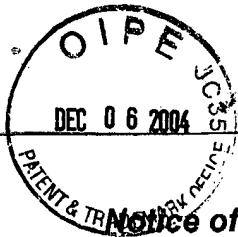
NOV 22 2004

PATTERSON, THUENTE, SKAAR
& CHRISTENSEN, P.A.

DOCKETED

Please find below and/or attached an Office communication concerning this application or proceeding.

Check
status re
abandonment
12-17-04
KJL



Notice of Abandonment


Application No.	Applicant(s)
10/018,189	LAVIGNE ET AL.
Examiner	Art Unit
Ruth A. Davis	1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

- ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 22 September 2003.
 - ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - ☒ A reply was received on 3/22/04 and 4/8/04 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - ☐ No reply has been received.
- ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - ☐ The issue fee and publication fee, if applicable, has not been received.
- ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - ☐ No corrected drawings have been received.
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☒ The reason(s) below:

Applicant canceled all claims drawn to the elected invention and presented only claims to a non elected invention.


LEON B. LANKFORD, JR.
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

3335.01-US-01



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DEC 06 2004

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,189	03/18/2002	Charles Lavigne	28.018	4897

7590

06/28/2004

PATTERSON, THUENTE, SKAAR AND CHRISTENSEN, P.A.
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 MINNEAPOLIS, MN 55402-2100

RECEIVED

JUL 02 2004

PATTERSON, THUENTE, SKAAR
 & CHRISTENSEN, P.A.

EXAMINER
DAVIS, RUTH A
ART UNIT
PAPER NUMBER

1651

DATE MAILED: 06/28/2004

DOCKETED

Please find below and/or attached an Office communication concerning this application or proceeding.

Date of Office Action 6-28-04
 Response due 7-28-04
 Per 1 month extension 8-28-04
 Per 2 month extension 9-28-04
 Per 3 month extension 10-28-04
 Per 4 month extension 11-28-04
 Per 5th & FINAL extension 12-28-04

pk



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Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/018,189

03/18/2002

LAVIGNE, CHARLES

3335.01US01

EXAMINER

RUTH DAVIS

ART UNIT

PAPER

1651

06182004

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The timely submission under 37 CFR 1.129(a) filed on April 8, 2004 is not fully responsive to the prior Office action because the amended claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Specifically, the claims are now drawn to a method for enhancing normal insulin function, where as the claims were originally drawn to a method for treating insulin resistance. The methods are distinct, each from the other, because the search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 13, 16, 19 - 21, 26, 29, 30, 41, 45, 48, 50, 65, 70 and 72 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period supersedes the time period set in the prior Office action. The inventions of the remaining groups are directed to different inventions which are not connected in design, operation, and/or effect. These methods are independent since they are not disclosed as capable of use together, they have different modes of operation, they have different functions, and/or they have different effects. One would not have to practice the various methods at the same time to practice just one method alone.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth Davis, whose telephone number is 571-272-0915.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn, can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-0606.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

LEON B. JANKFORD, JR.
PRIMARY EXAMINER